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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----x  
4 RIO TINTO PLC,  
5 Plaintiff,

6 v.

7 14-cv-3042 (AJP)

8 VALE, S.A., et al.,  
9 Defendants.  
10 -----x11 New York, N.Y.  
12 October 7, 2014  
13 2:20 p.m.

14 Before:

15 HON. ANDREW J. PECK  
16 Magistrate Judge

## 17 APPEARANCES

18 QUINN EMANUEL URQUHART & SULLIVAN, LLP  
19 Attorneys for Plaintiff  
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21 Attorneys for Defendant Vale, S.A.  
BY: LEWIS J. LIMAN, ESQ.22 MISHCON DE REYA NEW YORK, LLP  
23 Attorneys for Defendants BSG Resources Limited  
and Benjamin Steinmetz  
BY: VINCENT FILARDO, ESQ.  
ELIZABETH ROTENBERG-SCHWARTZ, ESQ.  
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25 Attorneys for Defendants BSG Resources (Guinea) Ltd.,  
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Frederic Cilins, Michael Noy, Avraham Lev Ran,  
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1 (In open court)

2 THE COURT: On the record.

3 I got a status report letter from Mr. Lyle yesterday,  
4 or within the last day or two anyway. On the one hand, I am  
5 happy to hear that you are all continuing to negotiate in good  
6 faith. I am a little worried that things are going slower than  
7 I would like. And I don't know if I would need to give you a  
8 deadline that says, unless the stay motion -- which I saw came  
9 in last night but I haven't looked at it yet, and obviously  
10 there hasn't been a response, etc. I hope that everyone is  
11 moving as promptly as they can and are not dragging feet in  
12 order to keep discovery going slowly while the Court decides  
13 whether to stay it.

14 With that, it doesn't sound like you have any disputes  
15 that you want me to deal with per se, but let me hear from you.  
16 Mr. Lyle, you can start and we'll see what everyone has to say.

17 MR. LYLE: Thank you, your Honor. As the Court has  
18 noted, we are making progress as we indicated in our letter.  
19 We do have a number of issues which we also identified that  
20 could come to a head. We think it's going to be within the  
21 next period of -- the next round, probably after we've had a  
22 discussion further with both -- with each of the defendants.  
23 Mr. Lyle has been handling those negotiations with Mr. Liman  
24 and others on the defense side.

25 And with respect to the idea of a date, we think it

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1 might make some sense, your Honor, so that we can keep moving  
2 forward with discovery, we do think that there are topics  
3 which, as we indicated in our letter, such as agreed-on search  
4 terms, identification of custodians, and the topics that we've  
5 referenced in our joint letter that we submitted, those things  
6 can begin relatively soon. We are still talking about that,  
7 but if I had to guess, my sense is, based on what I'm hearing  
8 from Mr. Lyle, we may need to turn to you for assistance on  
9 that. So a date in the short term might be a good idea from  
10 our perspective to keep things moving along.

11 THE COURT: All right. We'll see what short-term  
12 dates are available and what exactly you mean by "the short  
13 term." But on the defense side, Mr. Liman?

14 MR. LIMAN: Your Honor, I agree with much of what  
15 Mr. Lyle has said. Just to give your Honor a sense of where we  
16 stand, we completed our first set of meet-and-confers with the  
17 plaintiff yesterday. Where things stand is we focused on the  
18 scope of the document requests. We do anticipate there will be  
19 some disagreements. There are some areas where the plaintiffs  
20 owe us some information to narrow the request. There are some  
21 areas where we owe them a proposal. After that is completed,  
22 what we anticipate doing is meting and conferring with respect  
23 to custodians where that can be done and having a discussion  
24 either about predictive coding or search terms and what search  
25 terms should be used.

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1                   So we're making progress.

2                   THE COURT: On most of the documents -- because I know  
3 one of the complaints, or one of the concerns, was how far back  
4 some of this goes -- is whatever is going to be produced likely  
5 to be electronically stored or is there a great deal of paper,  
6 or don't you know yet?

7                   MR. LIMAN: I don't know the answer to that, your  
8 Honor. And I think some of that probably depends upon the  
9 narrowing of the scope of the request. I think it is fair to  
10 say that, regardless of where the majority of the documents  
11 lie, it will be a substantial quantity of documents that will  
12 be electronic.

13                  THE COURT: All right. Just because, even if you scan  
14 paper documents in, predictive coding probably will not work  
15 nearly as well on the scanned documents, which will therefore  
16 be lacking a lot of metadata, as it would if we're dealing  
17 largely with ESI. It may be you have to use different methods  
18 for the type of material. But OK.

19                  All right. Other defense counsel has anything to add?

20                  MR. FILARDO: Your Honor, we're in the process of  
21 responding in writing to the letter that we just received on  
22 October 1st from plaintiff. We're still in the early process  
23 of the meet and confer, hoping to get to an agreement on what  
24 the proper scope will be for jurisdictional discovery. I think  
25 we have a disagreement as to that issue.

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1 THE COURT: Well, sooner rather than later.

2 MR. FILARDO: Yes. So we're hoping to resolve it out  
3 the Court's intervention.

4 THE COURT: OK. So when do you think it makes sense  
5 to come back? On the one hand, you're much better off working  
6 things out to the extent you can, particularly -- and I do  
7 throw this out; I'm sure you would have thought of it on your  
8 own -- and that is doing stages of discovery. So if you are  
9 able to agree that X is within the scope but you disagree as to  
10 whether one should go back to do Y as well, get X going and  
11 worry about Y later. And I will certainly give a longer  
12 discovery period when we finally get to put a real date on  
13 this. If you are doing that amicably in an effort to save  
14 time, money, etc., then it keeps us from going too slowly.

15 So with all of that, why don't the two of you talk for  
16 a minute on a date idea. My schedule is incredibly tight in  
17 the October, November period, but I can always squeeze you in  
18 at some ungodly hour of the morning or something. Talk for a  
19 minute amongst the three of you. Or four, whoever. And then  
20 tell me what you want and we'll see what works.

21 MR. LYLE: Thank you, your Honor.

22 (Counsel confer)

23 MR. LYLE: Thank you, your Honor. We just conferred,  
24 as the Court requested. We think some time the week of  
25 November 3rd, if that's convenient for your Honor, we could be

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1 available.

2 THE COURT: OK. We could do it Monday the 3rd or, if  
3 you want to do it the -- Halloween the 31st, the Friday before,  
4 I could work you in there. Rest of the week of November 3rd is  
5 the Sedona conference meeting where I will be instead of here.  
6 So if Monday the 3rd works for you in the morning.

7 MR. LYLE: If the afternoon is available. If not, OK.  
8 We can be here.

9 THE COURT: OK. 9:30 on the 3rd. November 3 at 9:30.  
10 To the extent that means you have to fly up the night before, I  
11 apologize, but I'll be flying out.

12 MR. LYLE: We'll stop here for a night in New York,  
13 your Honor, happily. Thank you.

14 MR. LIMAN: Your Honor, would you like the same joint  
15 submission on a Thursday, at the end of the day?

16 THE COURT: Yes. That would be great.

17 And think about -- I don't think you need it yet, but  
18 particularly on e-discovery issues, think about whether you  
19 want a special master to serve as more of a mediator. If it's  
20 disputes and you want a ruling, I can handle that. If you  
21 think that your negotiations would be improved when you get  
22 into ESI nitty-gritty by having somebody who speaks  
23 computerese, so to speak, helping you all out, then if you all  
24 can agree on somebody that's fine. If not, if you want me to  
25 suggest somebody who can do that. If you think you can do all

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1 it on your own -- I know a lot of the firms have in-house,  
2 either at the client or at the law firm, e-discovery  
3 specialists. But make sure whatever deals you cut are smart  
4 ones. And if you want help in that, obviously you have to pay  
5 for that sort of help, but it is available.

6 All right. See you on the 3rd.

7 MR. LIMAN: Thank you, your Honor.

8 MR. LYLE: Thank you, your Honor.

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